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10 Attorneys for Respondent:  
11 SAN PABLO LYTTON CASINO  
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14 UNITED STATES OF AMERICA  
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16 BEFORE THE NATIONAL LABOR RELATIONS BOARD  
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18 REGION 32  
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20 SAN PABLO LYTTON CASINO

21 And

22 UNITE HERE, LOCAL 2850  
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Cases 32-CA-025585  
32-CA-025665  
32-CA-064020  
32-CS-086359

**RESPONDENT'S OPPOSITION  
TO COUNSEL FOR ACTING  
GENERAL COUNSEL'S MOTION  
TO FILE AN ANSWERING  
BRIEF TO RESPONDENT'S  
REPLY BRIEF**

1 Respondent Lytton Rancheria of California d/b/a Casino San Pablo (hereinafter  
2 “Respondent” or “CSP”) respectfully objects to the General Counsel’s Motion to file an Answering  
3 Brief to Respondent’s Reply Brief (hereinafter, “Motion”).

4 On January 14, 2013, after reviewing and considering both Respondent’s motion for leave  
5 to file a reply brief and the General Counsel’s opposition, Administrative Law Judge Jay R. Pollack  
6 issued an order granting Respondent’s motion.

7 Importantly, Judge Pollack stated: “The *parties* have until January 28, 2013, to file reply  
8 briefs.” (Emphasis added.)

9 Pursuant to Judge Pollack’s order, Respondent filed and served its reply brief on January 28,  
10 2013. The General Counsel did not file any reply brief.

11 After reviewing Respondent’s Reply Brief, the General Counsel has filed this instant  
12 Motion.

13 The General Counsel’s Motion should be denied. First, both parties had notice that January  
14 28, 2013 was the deadline to submit reply briefs, and the General Counsel should not be given the  
15 unfair advantage of reviewing Respondent’s Reply Brief and an additional 14 days to craft a  
16 response. The General Counsel was aware of the issues Respondent intended to raise since  
17 December 28, 2013, and Judge Pollack’s order was crystal clear: both parties were to file Reply  
18 briefs concurrently on January 28, 2013. Giving the General Counsel an additional 14 days to file a  
19 response after having time to review Respondent’s Reply is fundamentally unfair to Respondent.

20 Second, the General Counsel has not, and cannot, provide any evidence in support of his  
21 vague due process argument. That is because Respondent’s Reply Brief does not raise new issues  
22 or make new arguments beyond what it set forth in its motion for leave to file a reply brief. To the  
23 extent new testimony or evidence was cited in Respondent’s Reply Brief, that testimony and  
24 evidence was in support of the arguments raised in Respondent’s motion for leave to file a reply  
25 brief, and Respondent was entitled to expand on the arguments and issues raised in its motion  
26 because the Judge *granted* Respondent’s motion. The General Counsel has failed to show what  
27 “new” issues or arguments Respondent has raised in its Reply that was not originally set forth in its  
28 motion for leave to file a reply. The General Counsel cannot, because there is none.

1 Finally, with respect to the General Counsel's citation to Section 102.46 of the Board's  
2 Rules and Regulations, this Section is inapplicable to the General Counsel's Motion. Section  
3 102.46 concerns the filing of "exceptions to the administrative law judge's decision or to any other  
4 part of the record or proceedings." 29 CFR 102.46(a).

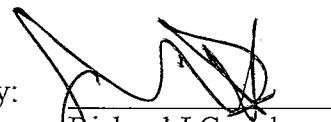
5 Rather, Section 102.35 of the Board's Rules and Regulations governs both Respondent's  
6 original motion to file a reply brief and the General Counsel's Motion, and gives the Administrative  
7 Law Judge broad discretion to act, which would include setting briefing schedules if necessary. In  
8 that regard, Section 102.35 states: "the administrative law judge shall have the authority...(8) To  
9 dispose of procedural requests, motions or similar matters...." 29 CFR 102.35(a)(8).

10 Pursuant to Section 102.35, Judge Pollack allowed both parties to file reply briefs on  
11 January 28, 2013. The General Counsel should not now be given the unfair advantage of having  
12 reviewed Respondent's Reply Brief and 14 days additional time to file a reply brief, especially  
13 since Respondent has not raised any new issues than that set forth in its motion for leave to file a  
14 reply brief.

15  
16 Dated: January 29, 2012

CURIALE WILSON LLP

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19 By:



Richard J Curiale

Joseph C Wilson

Attorneys for Respondent

SAN PABLO LYTTON CASINO

1 **CERTIFICATE OF SERVICE**

2 **UNITED STATES OF AMERICA )**  
3 **STATE OF CALIFORNIA )**  
4 **COUNTY OF SAN FRANCISCO )**

5 I am a citizen of the United States and a resident of the State of California. I am employed  
6 in the aforesaid county, State of California; I am over the age of 18 years and not a party to the  
7 within action; my business address is 1 Maritime Plaza, Suite 1600, San Francisco, California  
8 94111. On January 29, 2012, I served the within:

9 **RESPONDENT'S OPPOSITION TO COUNSEL FOR ACTING GENERAL**  
10 **COUNSEL'S MOTION TO FILE AN ANSWERING BRIEF TO RESPONDENT'S REPLY**  
11 **BRIEF**

12 **SERVICE BY ELECTRONIC MAIL:** By emailing a copy of the document(s)  
13 listed above to the electronic mail address set forth below:

14 Wei-Ling Huber  
15 Unite Here Local 2850  
16 whuber@unitehere.org

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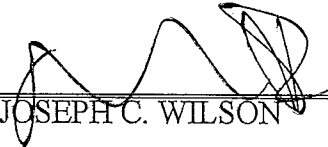
18 **SERVICE BY MAIL:** By placing a copy of the document(s) listed above in a  
19 sealed envelope(s), with postage fully prepaid, for collection and deposit in the United  
20 States Mail to the address set forth below.

21 Wei-Ling Huber  
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24 Oakland, CA 94612-2022

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26 Gary Connaughton  
27 Angela Howell-Fuentes  
28 National Labor Relations Board – Region 32  
1301 Clay Street, Room 300 N  
Oakland, CA 94612

1 I declare under penalty of perjury under the laws of the United States that the foregoing is  
2 true and correct, and that I am employed by an officer of a member of the bar of this Court at whose  
3 direction the service was made. Executed on January 29, 2012 in San Francisco, California.

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6 JOSEPH C. WILSON  
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